

ENTERED

November 16, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COREY WARF, individually and §
on behalf of all others similarly situated, §

Plaintiffs, §

v. §

CIVIL ACTION NO. 4:15-1580

EXTREME ENGINEERING LTD., and §
SCHLUMBERGER TECHNOLOGY §
CORPORATION, §

Defendants. §

MEMORANDUM AND ORDER

This Fair Labor Standards Act (“FLSA”) case is before the Court on the Opposed Motion for Order to Amend Docket Control Order (“Motion”) [Doc. # 48] filed by Defendant Schlumberger Technology Corporation (“Defendant”).¹ Plaintiff Corey Warf (“Plaintiff”)² responded [Doc. # 50], and Defendant replied

¹ According to Schlumberger, as a result of a merger with Defendant Extreme Engineering, Ltd., the latter is no longer an independent entity but rather a division of Schlumberger. Schlumberger contends that Extreme was improperly identified as a separate defendant. *See* Response to Motion for Conditional Certification [Doc. # 22], at ECF page 1 n.1.

² Twelve additional plaintiffs have consented to participate in this conditionally certified collective action. *See* Notices of Consent [Docs. ## 36–41, 45].

[Doc. # 51]. Defendant's Motion is ripe for review.

Having reviewed the parties' briefing, all matters of the record, and the applicable legal authorities, the Court **grants** Defendant's Motion. Defendant's error in failing to identify and provide to Plaintiffs' counsel contact information on 39 additional potential class members caused these individuals to have been prevented from asserting their rights through no fault of their own.³ *See Clarke v. Rader*, 721 F.3d 339, 344 (5th Cir. 2013). Analysis of whether to apply equitable tolling is fact specific. *Granger v. Aaron's, Inc.*, 636 F.3d 708, 712 (5th Cir. 2011).

The Court concludes that equitable tolling for these individuals is warranted as a remedial measure in order to place these individuals in the same position as others who received the original notices of this case in March 2016. The Court accordingly is persuaded that the tolling period should commence on March 7, 2016, the date of dissemination of the original notices, through the date the collective action notice is disseminated to the newly identified individuals. Plaintiffs' arguments to the contrary are rejected. Plaintiffs' requested tolling through the 60-day period during which the new individuals may opt into this action would result in a windfall that is both unwarranted for the newly identified

³ Defendant brought this omission to the attention of Plaintiffs' counsel *sua sponte*.

individuals and creates an unwarranted disparity between this group and individuals who received the original notices and have filed notices of consent. It is therefore

ORDERED that Defendant's Opposed Motion for Order to Amend Docket Control Order [Doc. # 48] is **GRANTED**. It is further


ORDERED that the Docket Control Order entered by the Court on February 17, 2016 [Doc. # 32] is **modified** and the periods set forth in the Motion are **adopted**. The parties must submit on or before **November 23, 2016**, a proposed Amended Docket Control Order using, to the extent possible, the Court's standard form attached to its Procedures on the Court Website *and* including calendar dates for each deadline. It is further

ORDERED that Plaintiffs' counsel must disseminate notice of this action to the individuals identified by Defendant in its supplemental disclosure of September 23, 2016. The same terms set forth in the Court's Orders of February 8 and 17, 2016 [Docs. ## 29, 33] apply. It is further

ORDERED that the new Notice/Dissemination Period will begin upon Plaintiffs' counsel's dissemination of the notices to the individuals identified by Defendant in its supplemental disclosure of September 23, 2016, which notice must be sent to all such individuals on the same day and sent no later than seven (7) days from entry of the this Order. It is further

ORDERED that the statute of limitations period for all new potential class members identified by Defendant in its supplemental disclosure of September 23, 2016 is **equitably tolled** from March 7, 2016 until the date the new notice/dissemination period commences.

SIGNED at Houston, Texas, this 16th day of **November, 2016**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE